

(2013) 02 P&H CK 0051
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 17926 of 2011

Sukhdev Singh and Another	Vs	APPELLANT
Superintending Canal Officer and Others		RESPONDENT

Date of Decision : 18-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2013) 02 P&H CK 0051

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : H.S. Bhullar, for the Appellant; Pankaj Mulwani, DAG, Punjab for State and Mr. S.S. Dhaliwal, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rameshwar Singh Malik, J.—Feeling aggrieved against the impugned order dated 15.02.2011 (Annexure P-1), passed by the Divisional Canal Officer Faridkot, and the appellate order dated 06.07.2011 (Annexure P-2) passed by the Superintending Canal Officer, Ferozepur, petitioners have approached this Court by way of instant petition invoking the writ jurisdiction of this Court under Article 226/227 of the Constitution of India, seeking a writ in the nature of certiorari for quashing the impugned orders. The facts necessary for disposal of the present writ petition, which are hardly in dispute are that, on the application moved by the private respondent no.5 for shifting of his land from one outlet to another, notice was issued to the petitioners for 15.02.2011. Pursuant to the service of notice having been effected, petitioners appeared on the date fixed i.e. 15.02.2011 and moved an application requesting for a date, opposing the inclusion of the area of respondent no.5, in the outlet of the petitioners. However, the request of the petitioners for adjourning the case was not accepted and the case was decided on 15.02.2011 itself, as it is clear from Annexure P-1. Dissatisfied, petitioners filed an appeal before the Superintending Canal Officer, which also came to be dismissed vide impugned order dated 06.07.2011

(Annexure P-2).

2. Notice of motion was issued and in response thereto, a joint reply on behalf of respondent Nos. 1 to 4 was filed, whereas a separate written statement was filed on behalf of respondent No. 5.

3. Learned counsel for the petitioners raised only one argument that the basic rule of natural justice has been violated in the present case. He submits that reasonable opportunity of being heard was denied to the petitioners without disclosing any reason in the impugned order dated 15.02.2011 (Annexure P-1). He next contended that since this basic defect in the impugned order (Annexure P-1), has not been appreciated even while passing impugned appellate order, both the orders were liable to be set aside by allowing the writ petition.

4. On the other hand, learned counsel for respondents No. 1 to 4 submits that opportunity of being heard was granted to the petitioners while issuing notice to them for 15.02.2011. They came present and the order was passed in their presence. He further submits that no error of law has been committed by the respondent-canal authorities, while passing the impugned orders and the writ petition was liable to be dismissed. Supporting the contention raised by the learned counsel for the State, learned counsel for respondent No. 5 also submits that due opportunity of being heard was granted to the petitioner. The writ petition was without any merit and the same was liable to be dismissed.

5. Having heard learned counsel for the parties, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the present writ petition deserves to be allowed, for more than one following reasons.

6. A bare combined reading of the impugned orders would show that the petitioners have not been granted due opportunity to put forth their claim. It is a matter of record that pursuant to the application moved by respondent No. 5 for shifting of his area from one outlet to another, notice was issued to the petitioners for 15.02.2011. It has also gone undisputed on the record that petitioners appeared and moved an application requesting for a date, however, no reason has been assigned by the respondent-canal authorities, while passing the impugned order (Annexure P-1) on 15.02.2011 itself, as to why the genuine request of the petitioners for seeking one opportunity could not be acceded. Having said that, this Court feels no hesitation to conclude that the impugned order (Annexure P-1) dated 15.02.2011 cannot be sustained.

7. Similarly, even the appellate authority has fell into serious error of law, while not appreciating the aforesaid factual as well as legal aspect of the matter, in spite of the fact that the illegality committed in passing the impugned order (Annexure P-1), was apparent on the face of it. In this view of the matter, it is unhesitatingly held that the impugned orders (Annexure P-1 as well as Annexure P-2) are liable to be set aside, being contrary to the basic principles of natural justice.

8. Further, if an order is found violating the principles of natural justice, it is bound to be set aside, as held by the Constitution Bench of the Hon''ble Supreme Court in Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, . The view taken by the Hon''ble Supreme Court in Hari Vishnu Kammat case (supra) has been consistently followed in a long series of subsequent judgments till date, but without their being any exception.

9. No other argument was raised.

10. Under the totality of facts and circumstances of the case noted above, coupled with reasons aforementioned, this Court is of the considered view that the impugned orders passed by the respondents-canal authorities, are suffering from patent illegality because of which they are liable to be set aside and the same are hereby ordered to be set aside.

11. The case is remanded back to the Divisional Canal Officer Faridkot, Canal Division, Faridkot-respondent No. 3 to decide the case afresh, in accordance with law, after granting due opportunity of being heard to both the parties. Resultantly, the instant writ petition stands allowed.